THE HON'BLE SRI JUSTICE P.S.NARAYANA

Writ Petition No.12788 of 2006

Dated: 10th October, 2006

Between :-

T. Babu Rao ..

Petitioner

And

The District Level Committee for
Sand Auctions, Zilla Parishad Compound,
Machilipatnam, Krishna Dist. Rep. by
Its Chairman ..
Respondent

THE HON'BLE SRI JUSTICE P.S.NARAYANA

Writ Petition No.12788 of 2006

ORDER:-

1. Heard Smt.Devineni Radha Rani representing the writ petitioner and A.G.P. for Panchayat Raj, the Counsel representing the respondents.

2. The Writ Petition is filed for a writ, order or direction, more particularly one in the nature of Writ of Mandamus calling for the records relating thereto and in connection with the proceedings issued in R.O.C.No.193/2005.Vem.7 dated 30-12-2005 and the resolution No.3, dt.27-12-2005, by the respondents, declaring the action of the respondents as being illegal, arbitrary and unconstitutional and set aside the same and consequently direct the respondent Nos.1 and 2 to grant non-operation period of 97 days in Vallurupalem Reach, Totlavalluri Mandal, Krishna District to the petitioner for quarrying of sand and to pass such other suitable orders.

3. It is stated by the petitioner that the petitioner is the only bread-winner of the entire family and eking out his livelihood for sustenance of his family by dint of hard work in doing various contract works on lease. It is also stated

that the petitioner had become the highest bidder in respect of the Vallurupalem Reach, Totlavalluru Mandal, Krishna District, pursuant to the notification dated 26-7-2003 in Rc.No.937/2003-No.1 on Tender-cum-Auction basis. The lease period commenced from 18-12-2004 to 17-12-2005. It is also stated that from 18-12-2004 the petitioner was operating quarrying activity in Vallurupalem Reach without any blemish and demur from the respondents. While so, the petitioner received a communication dt.6-8-2005, like bolt from the blue, from the 3rd respondent – M.R.O., to stop the work i.e., sand quarrying, as per the orders of the District Collector, Krishna District, since they are realizing the flood waters from Prakasam Barrage to the low level areas and as such the work is to be stopped until further orders. In difference to the orders of the District Collector, Krishna communicated through the Mandal Revenue Officer, the petitioner stopped the work in the Reach by the evening of 6th August, 2005 and the same was duly communicated to the 2nd respondent – District Panchayat Officer, by letter dated 29-8-2005. It is also stated that there was a recede in the flood waters, the petitioner made a representation to the 3rd respondent – M.R.O. on 9-11-2005 to allow the petitioner to start the “sand quarrying” as

the petitioner would be put to irreparable loss and hardship and consequently suffered deprivation of livelihood owing to non-operation of the quarrying. Meanwhile, the petitioner received a notice from the 3rd respondent dated 10-11-2005 conveying to start the quarrying since the floodwater receded. It is further stated that the M.R.O. informed about the stoppage of work in Vellurupalem Sand Reach from 6-8-2005 to 10-11-2005 vide his letter dated 15-11-2005 to the District Panchayat Officer, Krishna. It is also further stated that due to stoppage of work and non-operation of quarrying from 6-8-2005 to 10-11-2005 the petitioner suffered irreparable loss and the petitioner made a representation on 1-12-2005 to the District Level Committee who is the competent authority to consider the loss sustained by the petitioner for a period of 97 days and deprived of his livelihood. It was further stated that the petitioner all along with a fond hope and *bona fide* impression that his representation will be considered favourably taking the facts and circumstances narrated in his representation but however to his utter dismay, the petitioner received impugned order in R.O.C.No.193/2005 N-7 dated 30-12-2005 from the 2nd respondent – District Panchayat Officer stating that if the District Level Committee rejected

the representation dated 1-12-205 in its resolution No.3 dated 27-12-2005, without assigning the reasons for rejection of his representation, by merely stating that they are rejecting the representation. In accordance with clause 20 of the Annexure to the Agreement in G.O.Ms.No.1, C dated 1-1-2001 & I, it is stated that any obstructions, hurdles and losses take place during the lease period, the lease-holder shall hold the responsibility. It is also stated that if it is due to the act of the leaseholder, he shall have to bear the loss, but whereas in the present case the respondent officials asked the petitioner to stop the work and as per their orders and at their instance, the petitioner stopped the work. Such being the case, if the respondent officials asked the leaseholder to stop the work for any reason whatsoever, they are bound to consider the loss period or non-operation period sustained by the leaseholder. This is manifestly evident from many cases. In order to substantiate this fact and to bring it to the notice of this Court, it is stated that the petitioner is filing some copies of the orders of the respondents for perusal and reference, wherein in fact the representations of the leaseholders for non-operation period had been favourably considered and granted non-operation period where the work was abandoned at the instance of the official respondents:

(A) In the case of Damuluru Sand Reach, Ibrahim pattanam, lease holder, SriV.Tata Rao had been granted 176 days of non-operation period in the proceedings of the Joint Collector, Machiplipatnam in R.C.No.2877/2002, No.7 dated 71-2005.

(B) In the case of K.Kothapalem Sand Reach, Mopidevi Mandalam, Krishna District, leaseholder, Sri P.Rajendra had been granted 109 days of non-operation period in the proceedings No.R.C.No.193/2006 No.7 dated 27-5-2006.

Hence, it is stated that discriminating statement is given between the person who are similarly placed and hence the said action is hit by Article 14 of the Constitution of India.

4. This Court ordered initially *notice before admission* on 26-06-2006 and issued *rule nisi* on 25-9-2006.

5. Counter affidavit is filed and records also are produced by the learned A.G.P. for Panchayat Raj. In the counter affidavit it is stated that the petitioner is the lessee for the sand reach of Vallurupalem for a period of one year on the highest bid amount of Rs.22,05,000/- as against upset price of Rs.21,00,000/- and the lease period is from 18-12-2004 to 17-12-2005. The lessee has completed one year of lease period and before expiry of the lease period by 01-12-2005 he has submitted his

representation and the said representation was placed before District Level Sand Committee, Krishna, in its meeting held on 27-12-2005 and the District Level Sand Committee, Krishna has passed resolution No.3 in which the request of the petitioner written statement rejected on the ground that the Mandal Revenue Officer has no jurisdiction to give stopping orders of sand quarry and also that as per the agreement under condition 20 that the government is not responsible for any loss, interruptions, hurdles caused due to any reason and therefore, the petitioner was informed the same in the Office letter dt.30-12-2005. It is also stated that the petitioner should have brought the orders of the Mandal Revenue Officer, Thotlavalluru dt.6-8-2005 and requested permission from the competent authority to stop the sand mining as per the orders of the Mandal Revenue Officer, Thotlavalluru without permission of the District Level Sand Committee. It is further stated that it is not known whether the petitioner has really stopped sand mining or not and further as per the agreement that petitioner would bind over for any lapses, losses and obstructions if anything happened during the lease period and therefore he has no right to claim the extension of lease period as the alleged stoppage of sand quarry by the orders of the Mandal Revenue Officer, who has no authority to issue

any such orders. It is also further stated that the petitioner and the Mandal Revenue Officer, Thotlavalluru have brought the matter of alleged stoppage of sand quarrying but the District Level Sand Committee, Krishna in its meeting held on 27-12-2005 has passed respondent No.3 in which the request of the petitioner was rejected on the grounds that the Mandal Revenue Officer has no jurisdiction to give stopping order of sand quarry, condition 20 of the agreement the government is not responsible for any loss, interruptions, hurdles caused due to any reason and therefore the petitioner was informed the same in the office letter dt.30-12-2005. It is further stated that the letter issued by the Mandal Revenue Officer dt.10-11-2005 in favour of the petitioner speaks about the restarting of sand quarry by the p. It is also further stated that the very same Mandal Revenue Officer issued the certificate mentioning the alleged stoppage of sand quarry by the petitioner is based on a report of Panchayat Secretary dt.14-11-2005. It is also further stated that the two letters of the Mandal Revenue Officer i.e., respondent No.3 clearly goes to show that there was no stoppage of sand quarry as alleged by the petitioner, on the instructions of the Mandal Revenue Officer. It is also further stated that the petitioner should abide by the agreement in which he agreed to

bear the losses, lapses and obstructing during the lease period and therefore, the petitioner has no right to claim the extension of the lease period of allege stoppage of sand quarries, considering the above aspect District Level Sand Committee has rejected the request of the petitioner in resolution No.3 dt.27-12-2005. It is also stated that the orders if any should have been issued for the stoppage of sand quarrying only by the authority competent i.e., District Level Sand Committee. In the present case, no orders were issued by the authority competent and as submitted earlier, the Mandal Revenue Officer, Totlavalluru has no jurisdiction to issue any orders with regard to sand quarry. It is further stated to the both the petitioner and Mandal Revenue Officer should have brought the alleged situation to the notice of the District Level Sand Committee and it would have been considered by the District Level Sand Committee to take appropriate action in the matter and the District Level Sand Committee has rejected the representation of the petitioner dt.1-12-2005 on the grounds that petitioner should bear the loss if any as per the agreement deed made by him. It is also further stated that some of the lessees were considered for the extension of lease rights for the periods as the competent authority has issued stoppage orders and the District Level Sand

Committee has agreed for such extensions. It is further stated that the lessee of Damuluru sand reach was prohibited form sand by both to the Mandal Revenue Officer, Ibrahimpatnam. It is also stated that Executive Engineer, P.R., Vijayawada as the Executive Engineer, P.R., Vijayawada was executing the work of road to sand reach and both the above officials have issued certificate to that effect. It is also further stated that the District Level Sand Committee has considered the certificates issued by the Mandal Revenue Officer, and Executive Engineer, P.R., therefore the District Level Sand Committee has agreed for the extension of lease period and accordingly granted the extension of his lease rights for the said period. It is further stated that the District Level Sand Committee has rejected the request of the lease holder of K.Kothapalem on the ground that lessee are responsible for the loss sustained during the lease period as per the agreement deed executed by them and aggrieved by the above orders they have approached the Government and Government issued orders for the extension of lease periods with the direction for the District Panchayat Officer to verify the way bills during the period former lessees was returned the used and unused way bills to issue orders accordingly and as such the extension of lease period

was granted to such lease holders. It is further stated that the District Level Sand Committee is authority competent to discuss the facts and to take a decision basing on the facts of each case as per the rules issued in G.O.Ms.No.1 I & C Dt.1-1-2001 and in the distance case the District Level Sand Committee considered the representation of the petitioner and rejected on merits. It is also further stated that the facts in Writ Appeal No.415/2006 are totally different wherein the orders for stoppage of sand quarry was passed either by the authority competent or by the Court and in the Writ Petition No.7549/2006 this Court as only directed the respondents to consider and dispose of the representation of the petitioner in that case and wherein in the present case, the representation of the petitioner has already been considered and rejected on its merits.

6. On perusal of the records produced before this Court and also the stand taken in the counter affidavit filed by respondent No.2 and further in the light of the material placed before this Court by the writ petitioner, apart from the specific cases of the Tata Rao and Rajendra which had been referred to, this Court is of the considered opinion that when the cases of similarly placed persons on similar grounds had been favourably considered, it is unknown why the case of the writ petitioner was not

favourably considered. However, it is not clear whether the material relating to the other cases being favourably considered, placed before the first respondent by the petitioner, and under what circumstances the order of rejection had been made. Hence, in the light of the facts and circumstances of the case and also in the light of the records produced before this Court, this Court is of the considered opinion that the impugned order of rejection cannot be sustained and accordingly, the same is hereby set aside and the matter is remitted to the first respondent to re-consider the whole issue, if necessary, by affording opportunity to the petitioner to produce additional material, if the petitioner requires to do so, as early as possible and take a decision in this regard as expeditiously as possible, preferably within a period of four months from the date of receipt of the order.

7. The Writ Petition is accordingly allowed to the extent indicated above. No order as to costs.

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Justice P.S.Narayana

October, 2006

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